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IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: §
§
MERITAGE MORTGAGE CORPORATION § **CASE NO. 09-30971-SGJ-7**
§
DEBTOR §

MOTION TO COMPROMISE CONTROVERSY WITH SOKOLOUSKYS

TO THE HONORABLE STACEY G. JERNIGAN, U.S. BANKRUPTCY JUDGE:

NOW COMES Daniel J. Sherman, trustee, and files this Motion to Compromise Claims of the Estate and would show the Court the following:

1. On February 17, 2009, **MERITAGE MORTGAGE CORPORATION** (“Debtor”) filed a Voluntary Petition under Chapter 7 of the Bankruptcy Code. Daniel J. Sherman (“Trustee”) was appointed as trustee.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §157 and 1334; and Bankruptcy Rule 9019. This is a core proceeding.
3. On March 20, 2007 in the Common Pleas Court, Stark County, Ohio, (Cause No. 2007-CV-01247) CitiGroup Global Markets Realty Corp., filed suit to judicially foreclose its lien on the homestead of David Sokolousky and Sandra Sokolousky. The Sokolouskys answered the complaint and asserted numerous affirmative defenses and counterclaimed against CitiGroup, the debtor Meritage Mortgage Corporation, 6 other

named defendants and John Does 1 through 10. The Sokolouskys alleged a pattern of abusive lending and loan origination practices against all these entities.

4. This Court modified the automatic stay twice: First, to permit CitiGroup to judicially foreclose and, second, to allow the estate to defend itself against the counterclaim of predatory lending practices. Eventually all the parties except the debtor agreed to a global settlement. The Sokouskys have offered to dismiss their counterclaim against this estate in exchange for receiving a \$10,000.00 unsecured claim and the release of a second mortgage in the amount of \$15,000.00 held –according to lien records – by Meritage Mortgage.

5. The Sokolouskys filed a proof of claim in this bankruptcy proceeding for \$75,000. Sherman believes accepting the settlement proposal is in the best in interests of the estate and asks this Court to approve it.

6. Courts have held that in order to approve a settlement or compromise under Bankruptcy Rule 9019(a), a bankruptcy court should find that the compromise proposed is fair and equitable, reasonable, and in the best interests of the Debtor's Estate. See e.g., Matter of AWECO, INC., 725 F.2d 243, 298 (5th Cir. 1984), cert. denied, 469 U.S. 880 (1984); Matter of Jackson Brewing Co., 624 F.2d 605, 607 (5th Cir. 1980) (decided under the Bankruptcy Act). While it is necessary for the proponent of a compromise to set forth the legal and factual content of the compromise so that the Bankruptcy Court can make an intelligent evaluation of the proposed settlement, See Matter of AWECO, Inc., 725 F.2d at 239, it is not incumbent upon the proponent to present a mini-trial or full evidentiary hearing, because the bankruptcy court in determining whether to approve a compromise "is not to decide the numerous questions of law and fact raised" by the

compromise, but is rather "to canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness'". In re W.T. Grant Co., 694 F.2d 599, 608 (2d Cir. 1983), cert. denied sub nom. Cosoff v. Rodman, 464 U.S. 822 (1983), quoting Newman v. Stein, 464 F.2d 689, 693 (2nd Cir. 1972).

7. In deciding whether a particular compromise falls within the "range of reasonableness," a bankruptcy court should consider the following factors:

- a. the probability of success in the litigation, with due consideration for the uncertainty in fact and law;
- b. the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and
- c. all other factors bearing on the wisdom of the compromise.

8. Trustee believes that this settlement is fair and reasonable.

FOR THESE REASONS, Daniel J. Sherman, trustee, asks this Court to approve the settlement with the Sokolouskys and

- Authorize the trustee to execute a release of a \$15,000 second mortgage on the Sokolousky home;
- Allow the Sokolouskys a general unsecured claim in the amount of \$10,000.00 disallowing the balance of \$65,000.00 in the proof of claim filed; and
- Grant any other relief the Court may deem appropriate.

ANY PARTY WISHING TO RESPOND TO THIS PLEADING MUST FILE THE RESPONSE WITH THE U.S. BANKRUPTCY CLERK, ROOM 1254, 1100 COMMERCE STREET, DALLAS, TX 75242, AND SERVE A COPY ON THE TRUSTEE AT 509 N. MONTCLAIR AVENUE, DALLAS, TX 75208, WITHIN 24 DAYS OF THE SERVICE OF THIS PLEADING. IF A RESPONSE IS FILED AND SERVED TIMELY, A HEARING ON THE RESPONSE WILL BE SCHEDULED WITH A NOTICE TO THE RESPONDING PARTY ONLY.

IF NO RESPONSE IS FILED AND TIMELY SERVED ON THE TRUSTEE, THE COURT MAY DEEM THE RELIEF REQUESTED UNOPPOSED AND MAY ENTER AN ORDER GRANTING THE RELIEF REQUESTED WITHOUT FURTHER NOTICE TO ANY PARTY.

Respectfully submitted,

SHERMAN & YAQUINTO, L.L.P.

/s/ Daniel J. Sherman

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CERTIFICATE OF SERVICE

This is to certify that on the 18th day of November, 2010, the foregoing **MOTION TO COMPROMISE CONTROVERSY** was forwarded to all parties shown on the attached list via electronic transmission or first-class mail, postage prepaid.

/s/ Daniel J. Sherman

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